

HOUSE BILL 1182

Q4, Q7, Q8

9lr0735

By: **Delegate Hixson**

Introduced and read first time: February 13, 2009

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Communications Services – Taxation and Regulation**

3 FOR the purpose of repealing the public service company franchise tax as to persons
4 engaged in a telephone business in the State; imposing the State sales and use
5 tax on the sale of certain communications services; providing that the sales and
6 use tax does not apply to certain charges related to communications services;
7 repealing the authority of certain local governments to enter into or renew
8 certain agreements that include a cable franchise fee after a certain date;
9 providing for the collection and distribution of certain fees owed to a local
10 government under a cable franchise agreement entered into on or before a
11 certain date; authorizing the Public Service Commission to enter into certain
12 agreements on or after a certain date; providing for the application of this Act;
13 and generally relating to the taxation and regulation of communications
14 services.

15 BY repealing and reenacting, with amendments,
16 Article – Tax – General
17 Section 8–401, 8–402, and 8–409
18 Annotated Code of Maryland
19 (2004 Replacement Volume and 2008 Supplement)

20 BY repealing
21 Article – Tax – General
22 Section 8–406(c) and 8–407
23 Annotated Code of Maryland
24 (2004 Replacement Volume and 2008 Supplement)

25 BY repealing and reenacting, without amendments,
26 Article – Tax – General
27 Section 11–101(a)
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2004 Replacement Volume and 2008 Supplement)

2 BY adding to

3 Article – Tax – General

4 Section 11–101(c–1), (c–2), (d–1), (d–2), (d–3), and (f–1) and 11–231

5 Annotated Code of Maryland

6 (2004 Replacement Volume and 2008 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article – Tax – General

9 Section 11–101(m)

10 Annotated Code of Maryland

11 (2004 Replacement Volume and 2008 Supplement)

12 (As enacted by Chapter 10 of the Acts of the General Assembly of 2008)

13 BY adding to

14 Article 24 – Political Subdivisions – Miscellaneous Provisions

15 Section 23–101 and 23–102 to be under the new title “Title 23. Cable Franchise
16 Agreements”

17 Annotated Code of Maryland

18 (2005 Replacement Volume and 2008 Supplement)

19 BY adding to

20 Article – Public Utility Companies

21 Section 8–701 to be under the new subtitle “Subtitle 7. Cable Franchise
22 Agreements”

23 Annotated Code of Maryland

24 (2008 Replacement Volume and 2008 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article – Tax – General**

28 8–401.

29 (a) In this subtitle the following words have the meanings indicated.

30 (b) “Delivered for final consumption” means delivered by a public service
31 company in its service area as measured at the customer meter or other point of final
32 delivery.

33 (c) (1) “Gross receipts” means total operating revenue.

34 (2) “Gross receipts” includes:

35 (i) gross or total earnings and total receipts;

1 [(ii) for a telephone company, the full amount of approved and
2 applicable federal and State tariff charges for telephone lifeline service without the
3 discount provided by § 8–201(c) of the Public Utility Companies Article; and

4 (iii) for a telecommunications company providing interstate long
5 distance telecommunications service, the gross charges from the sale of long distance
6 telecommunications service that originates or terminates in the State and for which a
7 charge is made to a service address located in the State, regardless of where the
8 amount is billed or paid.

9 (3) “Gross receipts” does not include:

10 (i) any revenue that a public service company derives from an
11 activity other than an electric, gas, or telephone business; or

12 (ii) net uncollectible revenue.

13 (4) For a public service company engaged in a telephone business in
14 the State, gross receipts does not include:

15 (i) gross charges from the sale by the public service company to
16 another public service company subject to the tax imposed by this subtitle of a service
17 or product for resale;

18 (ii) gross charges from the sale by the public service company of
19 Internet access service by which a connection is provided between a computer and the
20 Internet; or

21 (iii) gross charges from the sale of telecommunications service
22 obtained by using a prepaid telephone calling arrangement, as defined in § 11–101 of
23 this article.

24 (5) For a public service company engaged in the transmission,
25 distribution, or delivery of electricity or gas in the State:

26 (i) “gross receipts” includes:

27 1.] (II) except as provided in [item (ii)2 and 3 of this
28 paragraph,] **PARAGRAPH (3)(IV) AND (V) OF THIS SUBSECTION**, gross charges for
29 the transmission, distribution, or delivery of electricity or natural gas or for
30 distribution or delivery–related services; and

31 [2.] (III) competitive transition charges, intangible
32 transition charges, and any other surcharge or other cost–recovery mechanism
33 authorized for recovery of transition costs or the costs of demand side management or
34 other energy conservation programs, universal service or other public purpose
35 programs, or consumer education programs[; and].

1 [(ii)] (3) [“gross] **“GROSS** receipts” does not include:

2 (I) ANY REVENUE THAT A PUBLIC SERVICE COMPANY
3 **DERIVES FROM AN ACTIVITY OTHER THAN AN ELECTRIC OR GAS BUSINESS;**

4 (II) **NET UNCOLLECTIBLE REVENUE;**

5 [1.] (III) gross charges from the sale of electricity or
6 natural gas;

7 [2.] (IV) gross charges from the transmission,
8 distribution, or delivery of electricity or natural gas to another public service company
9 subject to the tax imposed under § 8–402 of this subtitle if the buyer intends to resell
10 the electricity or natural gas; or

11 [3.] (V) gross charges from an interstate transmission
12 network or from the transmission, distribution, or delivery of electricity or natural gas
13 to a customer located in another state.

14 [(d) “Long distance telecommunications service” means telecommunications
15 service for a telecommunication that does not originate and terminate in the same
16 local calling area.]

17 [(e)] (D) “Production activity” has the meaning stated in § 11–101 of this
18 article.

19 [(f)] (E) “Public service company” means a person[:

20 (1) engaged in a telephone business in the State; or

21 (2)] engaged in the transmission, distribution, or delivery of electricity
22 or natural gas in the State.

23 8–402.

24 (a) A franchise tax, measured by gross receipts, is imposed, for each calendar
25 year, on each public service company[:

26 (1) engaged in a telephone business in the State; or

27 (2)] engaged in the transmission, distribution, or delivery of electricity
28 or natural gas in the State.

29 (b) The tax imposed under subsection (a) of this section does not apply to a
30 public service company that is:

- 1 (1) a county;
- 2 (2) a municipal corporation; or
- 3 (3) a nonprofit electric cooperative.

4 8-406.

5 [(c) (1) To prevent actual multiple taxation of the sale of interstate long
6 distance telecommunications service, a long distance telecommunications company,
7 upon proof that it has paid a properly due excise, sales and use, or gross receipts tax in
8 another state on a sale the gross receipts from which are subject to taxation under this
9 subtitle, shall be allowed a credit against the public service company franchise tax for
10 the amount paid.

11 (2) The credit permitted under this subsection may not exceed the tax
12 imposed under this subtitle.]

13 [8-407.

14 A telephone company may claim a credit against the public service company
15 franchise tax equal to all approved and applicable federal and State tariff charges for
16 telephone lifeline service not billed to eligible subscribers as provided in § 8-201 of the
17 Public Utility Companies Article.]

18 8-409.

19 [(a) The public service company franchise tax with respect to gross receipts
20 from telecommunications service shall be added to and disclosed as an element of the
21 public service company's charge to the customer for the service.

22 (b)] A public service company may surcharge its customers for the public
23 service company franchise tax imposed under § 8-402.1 of this subtitle.

24 11-101.

25 (a) In this title the following words have the meanings indicated.

26 (C-1) (1) **“CABLE SERVICE” MEANS:**

27 (I) **THE ONE-WAY TRANSMISSION TO SUBSCRIBERS OF:**

28 **1. VIDEO PROGRAMMING AS DEFINED IN 47 U.S.C. §**
29 **522(20); OR**

1 RETRIEVING, USING, OR MAKING AVAILABLE INFORMATION VIA
2 COMMUNICATIONS SERVICES FOR PURPOSES OTHER THAN THE ELECTRONIC
3 TRANSMISSION, CONVEYANCE, OR ROUTING.

4 (D-3) (1) "INTERNET ACCESS SERVICE" MEANS A SERVICE THAT
5 ENABLES USERS TO ACCESS CONTENT, INFORMATION, ELECTRONIC MAIL, OR
6 OTHER SERVICES OFFERED OVER THE INTERNET.

7 (2) "INTERNET ACCESS SERVICE" MAY INCLUDE ACCESS TO
8 PROPRIETARY CONTENT, INFORMATION, AND OTHER SERVICES AS PART OF A
9 PACKAGE OF SERVICES OFFERED TO USERS.

10 (3) "INTERNET ACCESS SERVICE" DOES NOT INCLUDE
11 COMMUNICATIONS SERVICES, EXCEPT TO THE EXTENT COMMUNICATIONS
12 SERVICES ARE PURCHASED, USED, OR SOLD BY A PROVIDER OF INTERNET
13 ACCESS TO PROVIDE INTERNET ACCESS.

14 (F-1) (1) "PRIVATE COMMUNICATIONS SERVICE" MEANS A
15 COMMUNICATIONS SERVICE THAT ENTITLES THE CUSTOMER OR USER TO
16 EXCLUSIVE OR PRIORITY USE OF A COMMUNICATIONS CHANNEL OR GROUP OF
17 CHANNELS BETWEEN OR AMONG CHANNEL TERMINATION POINTS, REGARDLESS
18 OF THE MANNER IN WHICH SUCH CHANNEL OR CHANNELS ARE CONNECTED.

19 (2) "PRIVATE COMMUNICATIONS SERVICE" INCLUDES
20 SWITCHING CAPACITY, EXTENSION LINES, STATIONS, AND ANY OTHER
21 ASSOCIATED SERVICES THAT ARE PROVIDED IN CONNECTION WITH THE USE OF
22 SUCH CHANNEL OR CHANNELS.

23 (m) "Taxable service" means:

24 (1) fabrication, printing, or production of tangible personal property by
25 special order;

26 (2) commercial cleaning or laundering of textiles for a buyer who is
27 engaged in a business that requires the recurring service of commercial cleaning or
28 laundering of the textiles;

29 (3) cleaning of a commercial or industrial building;

30 (4) [cellular telephone or other mobile telecommunications service]
31 COMMUNICATIONS SERVICES;

32 (5) ["900", "976", "915", and other "900"-type telecommunications
33 service;

- 1 (6) custom calling service provided in connection with basic telephone
 2 service;
- 3 (7) a telephone answering service;
- 4 (8) pay per view television service;
- 5 (9)] credit reporting;
- 6 [(10)] (6) a security service, including:
- 7 (i) a detective, guard, or armored car service; and
- 8 (ii) a security systems service; **OR**
- 9 [(11)] (7) a transportation service for transmission, distribution, or
 10 delivery of electricity or natural gas, if the sale or use of the electricity or natural gas
 11 is subject to the sales and use tax; or
- 12 [(12)] (8) a prepaid telephone calling arrangement.

13 **11-231.**

14 **THE SALES AND USE TAX DOES NOT APPLY TO A CHARGE FOR:**

- 15 (1) **PROVISION OF AIR-TO-GROUND RADIOTELEPHONE SERVICES,**
 16 **AS DEFINED IN 47 C.F.R. § 22.99;**
- 17 (2) **A COMMUNICATIONS SERVICES PROVIDER'S INTERNAL USE OF**
 18 **COMMUNICATIONS SERVICES IN CONNECTION WITH ITS BUSINESS OF**
 19 **PROVIDING COMMUNICATIONS SERVICES; OR**
- 20 (3) **CHARGES FOR PROPERTY OR OTHER SERVICES THAT ARE NOT**
 21 **PART OF THE SALE OF COMMUNICATIONS SERVICES, IF THE CHARGES ARE**
 22 **STATED SEPARATELY FROM THE CHARGES FOR COMMUNICATIONS SERVICES.**

23 **Article 24 - Political Subdivisions - Miscellaneous**

24 **TITLE 23. CABLE FRANCHISE AGREEMENTS.**

25 **23-101.**

- 26 (A) **IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
 27 **INDICATED.**

1 (B) (1) "CABLE OPERATOR" MEANS A PERSON THAT:

2 (I) PROVIDES CABLE SERVICE OVER A CABLE SYSTEM AND,
3 DIRECTLY OR THROUGH ONE OR MORE AFFILIATES, OWNS A SIGNIFICANT
4 INTEREST IN THAT CABLE SYSTEM; OR

5 (II) CONTROLS OR IS RESPONSIBLE FOR, THROUGH ANY
6 ARRANGEMENT, THE MANAGEMENT AND OPERATION OF A CABLE SYSTEM,
7 WHETHER OR NOT THE OPERATOR HAS ENTERED INTO A FRANCHISE
8 AGREEMENT WITH A LOCALITY.

9 (2) "CABLE OPERATOR" DOES NOT INCLUDE A PROVIDER OF
10 WIRELESS OR DIRECT-TO-HOME SATELLITE TRANSMISSION SERVICE.

11 (C) (1) "CABLE SERVICE" MEANS:

12 (I) THE ONE-WAY TRANSMISSION TO SUBSCRIBERS OF:

13 1. VIDEO PROGRAMMING AS DEFINED IN 47 U.S.C. §
14 522(20); OR

15 2. OTHER PROGRAMMING SERVICE; AND

16 (II) SUBSCRIBER INTERACTION THAT IS REQUIRED FOR THE
17 SELECTION OF VIDEO PROGRAMMING OR OTHER PROGRAMMING SERVICE.

18 (2) "CABLE SERVICE" DOES NOT INCLUDE:

19 (I) VIDEO PROGRAMMING PROVIDED BY A COMMERCIAL
20 MOBILE SERVICE PROVIDER AS DEFINED IN 47 U.S.C. § 332(D); OR

21 (II) DIRECT-TO-HOME SATELLITE SERVICE AS DEFINED IN
22 47 U.S.C. § 303(V).

23 (D) (1) "CABLE SYSTEM" MEANS A FACILITY CONSISTING OF A SET OF
24 CLOSED TRANSMISSION PATHS AND ASSOCIATED SIGNAL GENERATION,
25 RECEPTION, AND CONTROL EQUIPMENT THAT IS DESIGNED TO PROVIDE CABLE
26 SERVICE THAT INCLUDES VIDEO PROGRAMMING AND THAT IS PROVIDED TO
27 MULTIPLE SUBSCRIBERS WITHIN A COMMUNITY.

28 (2) "CABLE SYSTEM" DOES NOT INCLUDE:

29 (I) A SYSTEM THAT SERVES FEWER THAN 20 SUBSCRIBERS;

1 (II) A FACILITY THAT SERVES ONLY TO RETRANSMIT THE
2 TELEVISION SIGNALS OF ONE OR MORE TELEVISION BROADCAST STATIONS;

3 (III) A FACILITY THAT SERVES ONLY SUBSCRIBERS WITHOUT
4 USING ANY PUBLIC RIGHT-OF-WAY;

5 (IV) A FACILITY OF A COMMON CARRIER THAT IS SUBJECT,
6 IN WHOLE OR IN PART, TO THE PROVISIONS OF TITLE II OF THE
7 COMMUNICATIONS ACT OF 1934, 47 U.S.C. § 201 ET SEQ., EXCEPT TO THE
8 EXTENT THE FACILITY IS USED IN THE TRANSMISSION OF VIDEO PROGRAMMING
9 DIRECTLY TO SUBSCRIBERS OTHER THAN SOLELY TO PROVIDE INTERACTIVE
10 ON-DEMAND SERVICES;

11 (V) THE FACILITY OF AN ELECTRIC UTILITY USED TO
12 OPERATE ITS ELECTRIC SYSTEMS;

13 (VI) THE PORTION OF A SYSTEM THAT SERVES FEWER THAN
14 50 SUBSCRIBERS IN A LOCALITY, WHERE THAT PORTION IS A PART OF A LARGER
15 SYSTEM FRANCHISED IN AN ADJACENT LOCALITY; OR

16 (VII) AN OPEN VIDEO SYSTEM THAT COMPLIES WITH § 653 OF
17 TITLE VI OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, 47 U.S.C. §
18 573.

19 (E) (1) "FRANCHISE" MEANS AN AUTHORIZATION ISSUED BY A
20 FRANCHISING AUTHORITY FOR THE CONSTRUCTION OR OPERATION OF A CABLE
21 SYSTEM, A TELECOMMUNICATIONS SYSTEM, OR OTHER FACILITY IN THE PUBLIC
22 RIGHTS-OF-WAY.

23 (2) "FRANCHISE" INCLUDES:

24 (I) THE INITIAL AUTHORIZATION OR RENEWAL OF AN
25 AUTHORIZATION;

26 (II) A NEGOTIATED CABLE FRANCHISE OR AN ORDINANCE
27 CABLE FRANCHISE; OR

28 (III) A FRANCHISE, PERMIT, LICENSE, RESOLUTION,
29 CONTRACT, CERTIFICATE, OR AGREEMENT.

30 23-102.

31 (A) A CABLE FRANCHISE ENTERED INTO OR RENEWED ON OR AFTER
32 JANUARY 1, 2010, MAY NOT INCLUDE A FRANCHISE FEE.

1 **(B) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS**
2 **SUBSECTION, A CABLE FRANCHISE IN EFFECT ON OR BEFORE JANUARY 1, 2010,**
3 **SHALL REMAIN IN FULL FORCE AND EFFECT.**

4 **(2) A REQUIREMENT IN AN EXISTING CABLE FRANCHISE FOR**
5 **PAYMENT OF A MONETARY FEE BASED ON THE GROSS REVENUES OF THE**
6 **FRANCHISEE SHALL BE PAID AS PROVIDED IN SUBSECTION (C) OF THIS**
7 **SECTION.**

8 **(C) (1) A CABLE OPERATOR UNDER A CABLE FRANCHISE SUBJECT TO**
9 **SUBSECTION (B) OF THIS SECTION SHALL INCLUDE WITH THE SALES AND USE**
10 **TAX REMITTANCE ANY FRANCHISE FEE ACCRUING DURING THAT PERIOD.**

11 **(2) THE COMPTROLLER SHALL DISTRIBUTE TO EACH LOCALITY**
12 **THE AMOUNT REPORTED BY EACH FRANCHISEE BEFORE MAKING ANY OTHER**
13 **DISTRIBUTIONS.**

14 **(D) A LOCALITY'S ACCEPTANCE OF ANY PAYMENT UNDER SUBSECTION**
15 **(C) OF THIS SECTION MAY NOT PREJUDICE ANY RIGHTS OF THE LOCALITY**
16 **UNDER THE APPLICABLE CABLE FRANCHISE TO:**

17 **(1) AUDIT OR DEMAND ADJUSTMENT OF THE AMOUNTS**
18 **REPORTED BY ITS FRANCHISEE; OR**

19 **(2) ENFORCE THE PROVISIONS OF THE FRANCHISE BY ANY**
20 **LAWFUL ADMINISTRATIVE OR JUDICIAL MEANS.**

21 **Article - Public Utility Companies**

22 **SUBTITLE 7. CABLE FRANCHISE AGREEMENTS.**

23 **8-701.**

24 **(A) ON OR AFTER JANUARY 1, 2010, THE PUBLIC SERVICE**
25 **COMMISSION MAY ENTER INTO A STATEWIDE CABLE FRANCHISE AGREEMENT**
26 **WITH ANY CABLE OPERATOR.**

27 **(B) THE PUBLIC SERVICE COMMISSION SHALL DETERMINE THE SCOPE**
28 **OF AND ANY APPLICABLE FRANCHISE AGREEMENT FEES.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That the repeal of the public
30 service company franchise tax as to a public service company engaged in a telephone

1 business in the State as provided under this Act shall be applicable with respect to
2 gross receipts received on or after July 1, 2009.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 July 1, 2009.